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| APPLICATION NO.                                                                      | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/712,909                                                                           | 11/12/2003  | David B. Rhodes      | MAT 3J1             | 9460             |
| 23581                                                                                | 7590        | 06/18/2004           | EXAMINER            |                  |
| KOLISCH HARTWELL, P.C.<br>520 S.W. YAMHILL STREET<br>SUITE 200<br>PORTLAND, OR 97204 |             |                      | GUTMAN, HILARY L    |                  |
|                                                                                      |             |                      | ART UNIT            | PAPER NUMBER     |
|                                                                                      |             |                      | 3612                |                  |

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                  |  |
|------------------------------|-------------------------------|----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/712,909 | Applicant(s)<br>RHODES, DAVID B. |  |
|                              | Examiner<br>Hilary Gutman     | Art Unit<br>3612                 |  |

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-11, 15, 16, 20, 22, 23, 26, 27 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 12-14, 17-19, 21, 24, 25, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                             |                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/3/04</u> . | 6) <input type="checkbox"/> Other: ____                                                |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 2, line 4, “be” should be inserted after “may”. On page 7, line 7, “in” should be inserted after “previously”. Appropriate correction is required.

2. The use of the trademark Velcro (page 4) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

3. The abstract of the disclosure is objected to because the first sentence is not grammatically correct in that it is not a complete sentence. Perhaps on line 1, “system. The system” should be “system” so that the first and second sentences are combined.

Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

4. Claims 8, 10, 14, and 23 are objected to because of the following informalities:

In claim 8, line 3, “the” should be inserted before “opposing side walls”.

In claim 10, line 2, “a wall” should be “the wall”.

Art Unit: 3612

In claim 14, line 1, "said" should be inserted before "leg". On line 2, "another leg" should be "the other said leg".

In claim 23, line 1, "member" should be inserted after "retaining". On line 6, "a retaining member" should be "the retaining member". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Kanczuzewski.

Kanczuzewski (6,086,299) discloses a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region.

7. Claims 1-4, 7-9, 16, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Biela.

Art Unit: 3612

Biela (1,238,874) discloses a cargo retainer assembly (Figure 5) for a cargo compartment of a vehicle 10, the cargo retainer assembly comprising: an elongate retaining member 23; a retaining member support 30 configured to be secured to a wall 12 of the cargo compartment and having a receiving region 35 adapted to receive an end of the retaining member; and a spacer 32 configured to be selectively inserted into and removed from the receiving region, the spacer 32 being shaped and sized to contact the retaining member on two adjacent sides of the retaining member to thereby reduce gaps between the retaining member 23 and wall sections 35 which bound and define the receiving region.

With regard to claim 2, the retaining member 23, once secured within the receiving region, is adapted to inhibit shifting of cargo within the cargo compartment.

With regard to claim 3, the wall sections 35 of the receiving region form a pocket adapted to receive the retaining member and limit movement of the retaining member.

With regard to claim 4, the pocket is open on a side so as to permit lateral insertion of the end of the retaining member into the receiving region.

With regard to claim 7, the retaining member has a length sufficient to span between opposing side walls of the cargo compartment (Figure 2).

With regard to claim 8, a second retaining member support 30 is provided wherein the two retaining member supports are adapted to be mounted to the opposing side walls of the cargo compartment, such that the retaining member supports receive and retain opposing ends of the retaining member.

With regard to claim 9, the retaining member supports are selectively removable and adapted to be placed at intermediate locations along the opposing side walls.

Art Unit: 3612

For claim 16, Biela discloses a cargo area comprising: a side wall 12; and a cargo positioning system adapted to limit fore and aft movement of cargo disposed within the cargo area, the cargo positioning system comprising: a retaining member 23; a retaining member support 30 having a receiving region 35 sized to receive an end of the retaining member and adapted to be removably secured at a location along the side wall; and a removable spacer 32 insertable within the receiving region and adapted to urge the retaining member against the retaining member support, wherein the spacer is positionable between a portion of the retaining member and the retaining member support so as to contact adjacent sides of the retaining member.

For claim 30, Biela discloses a cargo retainer assembly for a cargo compartment of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 23; a retaining member support 30 configured to be secured to a wall 12 of the cargo compartment and having a receiving region 35 adapted to receive an end of the retaining member (Figures 2-3), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 32 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region.

With regard to claim 31, the spacer 32 is shaped to contact adjacent edge surfaces of the retaining member.

With regard to claim 32, the adjacent edge surfaces of the retaining member are perpendicular to one another.

Art Unit: 3612

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biela as applied to claim 1 above, and further in view of Kanczuzewski.

With regard to claim 10, Biela discloses the retaining member support being removably secured to the wall of the cargo compartment.

Biela lacks this securement with adhesive.

Kanczuzewski (6,086,299) teaches a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment using adhesive 50 and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided adhesive as taught by Kanczuzewski to secure the support of Biela to the cargo compartment wall in order to more quickly and easily position and re-position the support within the cargo compartment.

Art Unit: 3612

10. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biela as applied to claims 1 and 16 above, and further in view of Kanczuzewski.

Biela lacks the retaining member support having a handle adapted to be gripped by a user for manipulation and placement of the retaining member support.

Kanczuzewski (6,086,299) teaches a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment using adhesive 50 and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region. The retaining member support further includes a handle 17 (Figures 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a handle as taught by Kanczuzewski upon the retaining member support of Biela in order to manipulate and place the retaining member support in proper position within the cargo compartment.

11. Claims 15 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Biela as applied to claims 1 and 16 above, and further in view of Kanczuzewski.

Biela lacks the spacer being made of an elastic or foam material.



Art Unit: 3612

Kanczuzewski (6,086,299) teaches a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment using adhesive 50 and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region. The spacer is made of a compressible, resilient piece of material such as foam.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the spacer of Biela out of a foam or elastic material as taught by Kanczuzewski in order to allow the retaining member to be better and more securely positioned within the receiving region of the retaining member support.

12. Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biela in view of Kanczuzewski.

For claim 23, Biela inherently discloses a method of securing cargo within a cargo compartment by placing a retaining member 23 within the cargo compartment to inhibit fore and aft movement of the cargo, the method comprising: securing a retaining member support 30, having a receiving region 35, to a wall 12 of a cargo area; placing an end of the retaining member (Figures 2 and 3) within the receiving region; and inserting a spacer 32 within the receiving region, wherein the spacer 32 is configured to contact adjacent edge surfaces of the

Art Unit: 3612

retaining member 23 to take up excess space within the receiving region of the retaining member support.

With regard to claim 27, a second retaining member support (Figure 2) is secured to an opposing wall of the cargo area and an opposing end of the retaining member is placed within the second retaining member support, such that the retaining member spans a width of the cargo area.

Biela lacks the support being secured to a wall of the cargo area using adhesive.

Kanczuzewski (6,086,299) teaches a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment using adhesive 50 and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided adhesive as taught by Kanczuzewski to secure the support of Biela to the cargo compartment wall in order to more quickly and easily position and re-position the support within the cargo compartment.

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biela, as modified, and as applied to claim 23 above, and further in view of Kanczuzewski.

Art Unit: 3612

Biela, as modified, lacks the retaining member support having a handle adapted to be gripped by a user for manipulation and placement of the retaining member support.

Kanczuzewski (6,086,299) teaches a cargo retainer assembly (Figures 1-4) for a cargo compartment 70 of a vehicle, the cargo retainer assembly comprising: an elongate retaining member 80; a retaining member support 10, 20 configured to be secured to a wall 71 of the cargo compartment using adhesive 50 and having a receiving region 20 adapted to receive an end of the retaining member (Figure 4), wherein the receiving region has an open side to permit lateral insertion of the end of the retaining member into the receiving region; and a spacer 30 configured to be selectively inserted into and removed from the receiving region to selectively reduce gaps between the retaining member and the receiving region. The retaining member support further includes a handle 17 (Figures 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a handle as taught by Kanczuzewski upon the retaining member support of Biela, as modified, in order to manipulate and place the retaining member support in proper position within the cargo compartment.

***Allowable Subject Matter***

14. Claims 5-6, 12-14, 17-19, 21, 24-25, and 28-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3612


15. The following is a statement of reasons for the indication of allowable subject matter: the primary reason for the indication of allowable subject matter for the claims in this case is the inclusion of the specific fastener of claims 5, 17, and 24; the inclusion of the specific multiple different or various orientations of the spacer of claims 12 and 21; and the inclusion of the specific double-sided tape having multiple sections adapted to be used multiple times by sequential removal of a backing strip and multiple use adhesive of claim 28 in combination with the other elements recited which is not found in the prior art of record.

*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
D. GLENN DAYOAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Art Unit: 3612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**18. Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label

“PROPOSED” or “DRAFT”).